

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EMILY M. BURNS,)	
IN HER OWN RIGHT AND AS)	
ADMINISTRATRIX OF THE ESTATE OF)	
MATTHEW T. BURNS, DECEASED,)	
)	Civil Action No. 22-113
Plaintiff,)	
)	
v.)	District Judge W. Scott Hardy
)	Magistrate Judge Maureen P. Kelly
)	
SHAMA EXPRESS, L.L.C., <i>et al.</i> ,)	
)	
Defendants.)	

MEMORANDUM ORDER

This matter comes before the Court on the Report and Recommendation (“R&R”) entered by Magistrate Judge Maureen P. Kelly on December 20, 2022. (Docket No. 126). The R&R recommends that the Motion to Dismiss Count II of Plaintiff’s First Amended Complaint filed by Defendant BSE Trailer Leasing, L.L.C. d/b/a Bowman Trailer Leasing (“Bowman”), (Docket No. 44), should be denied. Service of the R&R was made on the parties through the Court’s CM/ECF system, and they were advised that any objections to same were due by January 3, 2023. (Docket No. 126). Thereafter, no party filed any objections to the R&R.

The Federal Rules of Civil Procedure provide that a party may file specific written objections to the proposed findings and recommendations of a magistrate judge, and a district judge must conduct a *de novo* review of any part of the R&R that has been properly objected to. Fed. R. Civ. P. 72(b)(2), (b)(3); *see also* 28 U.S.C. § 636(b)(1). Here, however, because no party filed any objections to the R&R, which explicitly stated that “[f]ailure to timely file objections will waive the right to appeal,” (Docket No. 126 at 9), this Court reviews the magistrate judge’s

decision for plain error. *See Tice v. Wilson*, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006); *see also* Fed. R. Civ. P. 72(b), Advisory Committee Notes (“When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”).

In this case, upon careful review of the R&R and the entire record, including Plaintiff’s First Amended Complaint, Bowman’s Motion to Dismiss and supporting brief, Plaintiff’s Response in opposition thereto, and Bowman’s Reply, (Docket Nos. 43, 44, 44-1, 46, 46-1, 58), and finding no plain error on the face of the record, the Court will accept Judge Kelly’s recommendation for the reasons stated in the R&R. As such, the Court will adopt the R&R as the Opinion of the Court and will deny Bowman’s Motion to Dismiss.

Accordingly, in view of the foregoing, the Court enters the following Order:

AND NOW, this 2nd day of February, 2023, IT IS HEREBY ORDERED that the R&R (Docket No. 126) is ADOPTED as the Opinion of the Court; and,

For the reasons set forth in the R&R, IT IS FURTHER ORDERED that the Motion to Dismiss filed by Defendant BSE Trailer Leasing, L.L.C. d/b/a Bowman Trailer Leasing (Docket No. 44) is DENIED.

s/ W. Scott Hardy
W. Scott Hardy
United States District Judge

cc/ecf: All counsel of record